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11 SHILOH GROUP LLC

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

NORTHERN CALIFORNIA RIVER  
WATCH, a 501(c)(3) non-profit  
Public Benefit Corporation,

Plaintiff,

v.

ECODYNE CORPORATION and  
DOES 1-30, inclusive,

Defendants,

THE SHILOH GROUP LLC, a California  
limited liability company,

Intervenor/Plaintiff,

v.

FLUOR CORPORATION, a corporation,  
and DOES 31-60, inclusive,

Defendants.

FLUOR CORPORATION,

Third party plaintiff,

v.

SHILOH ROAD, LLC, West Coast Metals,  
Inc., and M&M Services, Inc.,

Third party defendants.

Case No.: 3:10-cv-05105 MEJ

THE SHILOH GROUP LLC RESPONSE  
TO SUPPLEMENTAL SUBMISSION BY  
FLUOR AND RIVER WATCH  
REGARDING PROPOSED CONSENT  
JUDGMENT

1 Plaintiff in intervention The Shiloh Group LLC (“**TSG**”) responds as follows to the  
 2 joint “Response to Objections and Statement of Authority . . .” (“**Response**”; Dkt. #204, filed  
 3 Jan. 12, 2015) filed herein by Fluor Corporation (“**Fluor**”) and California River Watch  
 4 (“**River Watch**”) regarding the proposed consent judgment (“**Judgment**”; Dkt. 194-2, filed  
 5 Dec. 22, 2014) Fluor and River Watch have asked this court to enter with respect to their  
 6 settlement of River Watch’s claims herein.

7 TSG does not seek to prevent Fluor and River Watch from settling River Watch’s  
 8 claims: River Watch should be able to receive some compensation for the considerable  
 9 amount of time and effort it has invested in this case, particularly in light of the fact that (1)  
 10 Fluor is in the process of proposing to DTSC a more thorough cleanup of the Pond Site than  
 11 Fluor proposed when River Watch brought Fluor back into this case, and (2) DTSC is now  
 12 overseeing an environmental investigation of some sort of the Shiloh Road, LLC property,  
 13 which property was not the subject of an investigation, to TSG’s knowledge, when River  
 14 Watch brought Fluor back into this case.<sup>1</sup>

15 Fluor and River Watch, however, claim in the Response (1:5-8) that the Judgment, if  
 16 entered, “will bar [Shiloh Road, LLC, TSG] and the general public, from asserting a citizen  
 17 suit claim against Fluor under section 6972(a)(1)(B) of the Resource Conservation and  
 18 Recovery Act (“RCRA”) that seeks any of the relief sought by River Watch in its operative,  
 19 Fifth Amended Complaint”. This broad of a bar would only conceivably be appropriate if  
 20 EPA or some other bottomless government agency had forced Fluor to (a) conduct a very  
 21 comprehensive investigation of both properties, and (b) cleanup every last molecule of  
 22 pollution found thereon. That is not what has happened here.

23 In point of fact, the actual language of the Judgment goes farther than Fluor and River  
 24 Watch admit. The Judgment purports to release, for River Watch, “its members *and the*  
 25 *general public*” (Judgment 6:23, italics added) “all claims that were or could have been  
 26 asserted by River Watch against Fluor under RCRA or the” Clean Water Act (Judgment 6:27-  
 27 \_\_\_\_\_

28 <sup>1</sup> That these two changes were caused solely by River Watch’s efforts is not conclusively shown (TSG  
 conducted lead tests at the Pond Site, and M&M filed a complaint with DTSC regarding the Shiloh Road, LLC property),  
 but TSG believes that River Watch has contributed to these changes to some extent.

28; underlining added). That broad of a bar would, TSG submits, be beyond the jurisdiction of this court. Fluor and River Watch cite to no case that holds or supports the proposition that the fact that a citizens environmental group filed a complaint and got within 16 months of a trial should bar any and all future claims under these statutes regardless of circumstances shown to exist in the future.

If Fluor could accomplish that result by paying River Watch \$50,000, Fluor and other polluters would have an awfully strong incentive to collude with environmental groups that would file suit and accept a payment, thereby leaving the property owner and other citizen groups with no ability to seek relief under RCRA or other such laws when and if evidence of continuing contamination came to light.

River Watch may well be ‘standing in the shoes of’ the US EPA to some extent, and may share EPA’s desire to enforce laws that require pollution to be remediated, but River Watch cannot possibly fill EPA’s shoes. TSG submits that the court can take judicial notice of the fact that River Watch has fewer resources and capabilities than does the EPA and has less ability than does EPA to pay for lengthy litigation against the likes of Fluor.

It seems appropriate to bar future claims under RCRA or CWA against Fluor by River Watch or its members. But barring all future claims by anybody (i.e., the “general public”), under RCRA or CWA, without reference to the evidence that has been developed, would not be in the public interest and would not promote the objectives of RCRA or the CWA. The proposed Judgment is not “fair, reasonable and equitable” and arguably would “violate the law or public policy.” Sierra Club, Inc. v. Electronic Controls Design, Inc. 909 F.2d 1350, 1356 (9th Cir. 1990).<sup>2</sup>

TSG does not dispute this court’s ability to enter a consent judgment herein. TSG simply submits that the Judgment should expressly state that it does not bar claims by TSG,

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<sup>2</sup> Notably, in approving the consent judgment in the Sierra Club case, the court found it important that “The Sierra Club’s complaint was based upon the allegation that ECD was not in compliance with the Clean Water Act and was polluting the Oregon waters. The district court found that compelling ECD to comply with the terms of its permit or cease all discharges is ‘in the public interest.’” Sierra Club, Inc., 909 F.2d at 1355. No such public interest protections are present in the proposed Judgment here, and Fluor does not therein bind itself to actually implement the enhanced cleanup of the Pond Site (to unrestricted use standards) that Fluor is in the process of proposing to DTSC.

1 Shiloh Road, LLC or their successors, or any other claims by any person that are based on  
2 facts that are discovered subsequent the date of entry of the Judgment. The critical issue in  
3 the future should be whether new evidence of contamination has been discovered, not who  
4 discovered them, the form of relief sought or the statute under which the relief is sought.

5 TSG requests that the court require Fluor and River Watch to clarify the Judgment to  
6 clearly articulate the scope of the agreement and settlement between Fluor and River Watch,  
7 and the fact that the Judgment will not act as a bar against claims based on new or different  
8 facts discovered after entry of the Judgment. If DTSC and Fluor do a good job on the ongoing  
9 cleanups (Pond Site) and investigation (Shiloh Road, LLC property), Fluor should have no  
10 reason to fear successive citizens suits from anybody.

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12 Dated: January 15, 2015

*/s/ Brian C. Carter*  
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CARTER, MOMSEN & KNIGHT, PC  
By: Brian C. Carter

14 Attorneys for Intervenor/Plaintiff THE  
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**PROOF OF SERVICE BY ELECTRONIC DELIVERY**

(Northern California River Watch v. Ecodyne Corporation, ND Cal.,  
Case No.: 3:10-cv-05105 WHO)

I am employed in the County of Mendocino, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 305 N. Main Street, Ukiah, California, 95482.

On January 15, 2015, I served the attached document, entitled THE SHILOH GROUP LLC'S RESPONSE TO FLUOR AND RIVER WATCH'S SUPPLEMENTAL SUBMISSIONS RE PROPOSED CONSENT JUDGMENT, on the interested parties BY ELECTRONIC MAIL at the addressee(s) listed below, as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 15, 2015, at Ukiah, California.

/s/ Gina Testa Vau  
Gina Testa Vau